

## **DCH-3927: BEHAVIORAL HEALTH STANDARD CONSENT FORM PROVIDER AND ORGANIZATION FREQUENTLY ASKED QUESTIONS**

*A Frequently Asked Questions (FAQ) guide for Providers and Organizations about the Michigan Behavioral Health Standard Consent Form (DCH-3927)*

**If you have provided services to someone who has experienced domestic violence, sexual assault, and/or stalking and would like to release information about the individual, you should refer to Questions 3 and 4. You may also consult [www.michigan.gov/domesticviolence](http://www.michigan.gov/domesticviolence) for more information.**

### **1. What is the purpose of this form?**

The purpose of the form is to enable providers and organizations to share certain types of health information that have special privacy protections under federal and state law. The Michigan Department of Community Health created this form in compliance with Public Act 129 of 2014, which directs the Department to:

*“...develop a standard release form for exchanging confidential mental health and substance use disorder information for use by all public and private agencies, departments, corporations, or individuals that are involved with treatment of an individual experiencing serious mental illness, serious emotional disturbance, developmental disability, or substance use disorder.”*

### **2. What are my responsibilities under this form and Public Act 129 of 2014?**

All public and private agencies, departments, corporations or individuals involved with the treatment of an individual experiencing serious mental illness, serious emotional disturbance, developmental disability, or substance use disorder are required to honor and accept this form as a valid consent to share certain types of health information. Individuals and organizations that provide services under the Violence Against Women Act or Family Violence Prevention and Services Act are not required to accept and honor the form.

### **3. Why is there an exception for individuals or organizations that have provided services for domestic violence, sexual assault, and/or stalking? What should I do if my client would like to release information about services for domestic violence, sexual assault or stalking?**

Providers receiving federal funding under the Violence Against Women Act and/or Family Violence Prevention and Services Act are held to more stringent consent requirements under federal law and are therefore exempt from the requirements of Public Act 129 of 2014. Additional safeguards may need to be in place before health information is shared for individuals who have experienced domestic violence, sexual assault, and stalking. You may want to speak with the individual to see if additional safeguards are necessary.

For guidance on addressing issues related to consent and the provision of services for domestic violence, sexual assault, and/or stalking, please refer to [www.michigan.gov/domesticviolence](http://www.michigan.gov/domesticviolence) through the Michigan Department of Human Services.

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**4. Some of the individuals that I serve have experienced domestic violence, sexual assault, and/or stalking. May I still use the standard consent form?**

If you are an individual or organization that receives federal funding under the Violence Against Women Act and/or Family Violence Prevention and Services Act, you should not use the standard consent form. Individuals and organizations that receive funding under these programs are held to more stringent consent requirements.

If you provide services to individuals who have experienced domestic violence, sexual assault, and/or stalking but you do not receive federal funding under these programs, you should evaluate whether additional safeguards may need to be in place before information is shared. You may want to speak with the individual to see if additional safeguards are necessary. You may also consult [www.michigan.gov/domesticviolence](http://www.michigan.gov/domesticviolence) for more information.

**5. Do I have to use this form? Can I still use my own form? Can I still accept other release forms besides the standard form?**

You are required to honor this form when presented with it unless you are held to more stringent requirements under federal law. However, you may still use your own consent form or accept other consent forms that are in compliance with federal and state confidentiality laws.

**6. Why does the Department encourage entities to use the standard consent form?**

The standard consent form allows individuals, providers, and other organizations to use a common consent form to comply with relevant federal and state confidentiality laws. The use of the standard consent form will reduce confusion, simplify the process and enable more meaningful use of an individual's health information.

**7. What constitutes "accepting" the form?**

A provider or entity that receives the form must accept the form and disclose the information to the parties listed on the form as authorized.

**8. Is the standard consent form compliant with the Health Insurance Portability and Accountability Act (HIPAA) as well as other federal and state privacy laws and regulations?**

The Michigan Department of Community Health has designed the standard consent form to be compliant with the following federal and state laws:

- 42 Code of Federal Regulations Part 2
- Michigan Mental Health Code
- Michigan Public Health Code

HIPAA does not require an authorization or consent in order to use or disclose an individual's protected health information for treatment, payment or health care operations purposes. The disclosures made under the standard consent form are to diagnose, treat, manage, and receive payment for an individual's health care needs. These purposes fit within HIPAA's permissible disclosures without consent or authorization. Therefore, a separate HIPAA-compliant authorization is not required.

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### **9. Why doesn't the form contain all of the elements required for an authorization under HIPAA?**

HIPAA does not require an authorization in order to use or disclose an individual's protected health information for treatment, payment or health care operations purposes. A HIPAA authorization may need to be completed if information is to be disclosed outside of the treatment, payment, and health care operations exceptions under HIPAA. For example, a HIPAA authorization is required to share information for marketing purposes and to share psychotherapy notes.

### **10. What kind of information can be disclosed under the standard consent form?**

Under HIPAA, covered entities may share most types of health information for the purposes of payment, treatment, and health care operations. Public Act 129 of 2014 does not require entities to use the standard consent form to share information that could be shared exclusively under the requirements of HIPAA, as described in the previous question.

Under federal and state law, entities must receive specialized consent to share health information in an individual's record related to:

- Behavioral health or mental health services that are provided by the Michigan Department of Community Health, a Community Mental Health Service Provider, or an entity under contract with the Michigan Department of Community Health or a Community Mental Health Service Provider<sup>1</sup>
- Referrals and /or treatment for a substance use disorder<sup>2</sup>
- Communicable diseases such as sexually transmitted diseases and human immunodeficiency virus (HIV Infection, Acquired Immune Deficiency Syndrome or AIDS Related Complex)<sup>3</sup>

The Michigan Department of Community Health designed the standard consent form to allow for the release of these types of information consistent with HIPAA and other federal and state confidentiality laws. The standard consent form cannot be used to consent to the sharing of psychotherapy notes.

### **11. When do I need consent to share health records related to communicable diseases such as HIV?**

State law allows for the sharing of health records without consent with public health or health care providers to care, treat or protect the health of the individual; and to control or prevent further transmission of the disease to others.<sup>4</sup> Many communicable diseases, including HIV, are required to be reported to public health authorities, without consent, within 24 hours of being diagnosed. A list of these diseases and the timelines for reporting can be found at:

[http://www.michigan.gov/documents/Reportable\\_Disease\\_Chart\\_2005\\_122678\\_7.pdf](http://www.michigan.gov/documents/Reportable_Disease_Chart_2005_122678_7.pdf).

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<sup>1</sup> P.A. 258 of 1974 and MCL 330.1748

<sup>2</sup> 42 CFR Part 2

<sup>3</sup> P.A 368 of 1978, MCL 333.1101 et seq Under the Michigan Public Health Code, information may be shared without consent for prevention, care and treatment of communicable diseases.

<sup>4</sup> P.A 368 of 1978, MCL 333.1101 et seq Under the Michigan Public Health Code, information may be shared without consent for prevention, care and treatment of communicable diseases.

Health records may also be shared, without consent, upon court order. If health records related to communicable diseases are requested for purposes other than those stated, a consent form must be signed by the individual before sharing their health records.<sup>5</sup>

**12. Can I re-disclose information shared with me under the standard consent form?**

Federal law generally prohibits the re-disclosure of substance use disorder information unless the re-disclosure is expressly permitted by the written consent. The standard consent form allows an individual to designate providers and organizations that may share information among each other, as specified in the form. Federal law requires that a specific notice regarding re-disclosure accompany any disclosure of substance use disorder information that is shared with the individual's written consent.<sup>6</sup>

**13. How should the individuals that I serve list the entities with which they would like to share their health information?**

Under Section 1, the individual should include (1) the name of the provider or organization for whom the form is being completed and (2) any other providers or organizations with whom he or she would like his or her health information shared. The individual should include the specific name of the individual or organization that is given permission to share and receive information as opposed to a general designation. *Please note that a provider or organization who is listed on the form may share information with any other individual or organization that is also listed on the form.*

**14. Do I need to have the individual sign the standard consent form every year?**

The form is designed so that an individual may consent to the sharing of his or her health information for up to one year. An individual must renew his or her consent form each year.

**15. What methods of communication can I use to share health information once the individual has provided consent?**

Providers and organizations may share health information verbally or through mail, fax, or electronically. Providers should consider how to comply with an individual's wishes when determining how to send information. For example, a provider should not disclose information electronically if there is no way to electronically separate health information that cannot be disclosed from the other health information that may be disclosed.

**16. What resources can I share with individuals to assist them with the consent process?**

MDCH has developed the following resource documents that may be shared with individuals: "Frequently Asked Questions from Individuals about the Standard Consent Form" and "Consent Process Brochure." The most recent versions of these documents are available on the Michigan Department of Community Health website at <http://www.michigan.gov/bhconsent>.

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<sup>5</sup> P.A 368 of 1978, MCL 333.1101 et seq Under the Michigan Public Health Code, information may be shared without consent for prevention, care and treatment of communicable diseases.

<sup>6</sup> See 42 CFR 2.32.

**17. How should my organization handle the withdrawal of consent by an individual?**

Individuals may withdraw their consent verbally or in writing.

A provider should retain a copy of the withdrawal and provide a copy to the individual if the individual withdraws consent in writing. The entity should inform the individual that he or she should notify all providers and organizations listed on the form that consent has been withdrawn. The entity may also choose to assist the individual with sending a copy of withdrawal to other providers or organizations on the form.

If the individual withdraws consent verbally, the entity should document the time, place, and manner of the withdrawal for their records. The entity should also share a copy of the withdrawal with the individual. The entity should inform the individual that he or she should notify all providers and organizations listed on the form that consent has been withdrawn. The entity may choose to assist the individual with sending a copy of revocation to other providers or organizations on the form.

**18. If I have questions about the form or Public Act 129 of 2014, who should I contact?**

For questions about the standard form or Public Act 129 of 2014, please contact the Michigan Department of Community Health by phone at 844-275-6324, online at [www.michigan.gov/bhconsent](http://www.michigan.gov/bhconsent), or by email at [MDCH-BHConsent@michigan.gov](mailto:MDCH-BHConsent@michigan.gov).

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